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The Honorable Judge Snyder  
Chapter 13

5 **UNITED STATES BANKRUPTCY COURT**  
6 **FOR THE WESTERN DISTRICT OF WASHINGTON**

7 In re:  
8 THOMAS TAYLOR, and  
9 RAQUEL TAYLOR  
10 Debtors.

Case No.: 12-46601-PBS

Adversary Number:  
CHAPTER 13

11 COMPLAINT TO VOID AND STRIP LIEN  
12 FROM RECORDED TITLE AND  
13 DETERMINATION OF LACK OF  
SECURED STATUS

14 THOMAS TAYLOR, and  
15 RAQUEL TAYLOR,

Plaintiffs,

16 v.  
17 GREEN TREE SERVICING,  
18 d.b.a./a.k.a/f.k.a. BANK OF AMERICA,  
19 N.A.

Defendants.

21 Plaintiffs in the above captioned chapter 13 bankruptcy, through her attorney, Dallas W.

22 Jolley, Jr., bring this action against the Defendant, and allege and state:

23 COMPLAINT TO VOID AND STRIP LIEN  
FROM RECORDED TITLE AND DETERMINATION  
OF LACK OF SECURED STATUS  
PAGE 1 of 4

1

2                   **I. JURISDICTION AND VENUE**

3

4       1.1     This Court has jurisdiction over the adversary proceeding pursuant to the  
5 provisions of 28 U.S.C. §§ 157 and 1134. The adversary proceeding is a core proceeding, within  
6 the meaning of 28 U.S.C. § 157(b)(2), in that it concerns claims and matters arising out of the  
7 administration of this bankruptcy case and the rights duly established under Title 11 of the  
United States Code.

8       1.2     Venue is proper because this bankruptcy case was filed in the Western District of  
9 Washington, the debtors reside in Pierce County, WA and the transaction in question took place  
10 in Pierce County, WA.

11                   **II. PARTIES**

12

13       2.1     **PLAINTIFFS** Thomas and Raquel Taylor (“Plaintiffs” or “Debtors”) in case  
14 number 12-46601-PBS is pending in United States Bankruptcy Court for the Western District of  
15 Washington (the “chapter 13 case”). The Debtor’s real property is commonly described as: 1807  
16 39<sup>th</sup> St. SE, Puyallup Washington 98372. The Pierce County Assessor Tax Description Reads:

17                   Section 36 Township 20 Range 04 Quarter 31 CRYSTAL RIDGE DIVISION IIA:  
CRYSTAL RIDGE DIVISION IIA NE OF SW 36-20-04E L 13 EASE OF REC  
18 APPROX 10,849 SQ FT OUT OF 3-002 & 602089-038-0 SEG E-0716 NF 042993 NF

19       2.2     **DEFENDANT** is Green Tree Servicing, who purchased, acquired interest, or is  
20 doing business for Bank of America, N.A. (“Defendant” or “Creditor”) has a security interest in the  
21 plaintiff’s residence that is secured by a consensual lien in the second position.

22

23

COMPLAINT TO VOID AND STRIP LIEN  
FROM RECORDED TITLE AND DETERMINATION  
OF LACK OF SECURED STATUS  
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1           The Defendant Green Tree Servicing has its corporate office Located at 345 St. Peter Street,  
2 St. Paul, MN 55102. Bank of America, N.A. has its corporate headquarters located at: Bank of  
3 America Corporate Center, 100 North Tryon Street, Charlotte, North Carolina, 28202.

4

### III. FACTUAL ALLEGATIONS

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6       3.1     The plaintiff's interest on real property is subject to a first lien arising out of a  
7 mortgage in favor of Bank of America, account number xxxx5005, with secured interest in the  
8 amount of \$258,808 owing on the note, in the first position deed of trust, which is superior to all  
9 other consensual and non-consensual security interests.

10      3.2     The Defendant has second position mortgage in the amount of \$30,398.00.

11      3.3     The Pierce County Assessor has given the property a 2013 Taxable Assessed  
12 Value of \$222,700. See Exhibit A: Pierce County Assessor's Value/Tax History.

13      3.4     The Value of the property securing the Defendant's claim is less than the value of  
14 the property securing the 1<sup>st</sup> deed of trust in the amount of \$36,108, considering the Pierce County  
15 Assessor Value.

16           Pursuant to 11 U.S.C. 506(a), the Defendant cannot have an allowed secured claim as  
17 there is no equity to which its lien could attach. Therefore, the defendant's lien may be stripped  
18 from the record title and converted to a general non-priority unsecured claim. To prevent  
19 modification, a lien holder must be a holder of a secured claim rather than merely a holder of a  
20 security interest in order to be protected from a modification under 11 U.S.C. § 1332(b)(2). In  
21 this case the defendant is merely a holder of a security interest and the holder of a claim that is  
22 not supported by the estate of the property. *In re Lam v. Investors Thrift*, 211 B.R. 36 (Bank.r.  
23 9<sup>th</sup> Cir. 1997), this lien may be treated as unsecured and it may be stripped from the record title.

COMPLAINT TO VOID AND STRIP LIEN  
FROM RECORDED TITLE AND DETERMINATION  
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2                   **IV. PRAYER FOR RELIEF**  
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5                   THEREFORE, Plaintiff prays for judgment as follows:  
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8                  4.1     For entry of a judgment that strips the Defendant's second position Deed of Trust  
9 from the record title upon the completion of the Debtors' Chapter 13 Plan, and permission for the  
10 Plaintiff to record such Order.  
11

12                4.2     For disallowance of any secured claim to the Defendant for its Deed of Trust, but  
13 allowance for it as a general unsecured claim.  
14

15                4.3 For such other and further relief as may be just an equitable under the circumstances.  
16  
17

18               Dated this 29<sup>th</sup> Day of October 2012  
19

20               /s/ Dallas W. Jolley  
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